

National Marine Fisheries Service/NOAA, Commerce

§ 224.101

[77 FR 29912, May 21, 2012]

SOURCE: 64 FR 14066, Mar. 23, 1999, unless otherwise noted.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

§ 224.101 Enumeration of endangered marine and anadromous species.

Sec.

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224.102 Permits for endangered marine and anadromous species.

224.103 Special prohibitions for endangered marine mammals.

224.104 Special requirements for fishing activities to protect endangered sea turtles.

224.105 Speed restrictions to protect North Atlantic Right Whales.

AUTHORITY: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

The marine and anadromous species determined by the Secretary of Commerce to be endangered pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Shortnose sturgeon.	<i>Acipenser brevirostrum.</i>	Everywhere	32 FR 4001, Mar. 11, 1967.	NA.
Smalltooth sawfish	<i>Pristis pectinata</i> ...	U.S.A.	68 FR 15674, Apr. 1, 2003.	NA.
Totoaba	<i>Cynoscion macdonaldi.</i>	Everywhere	44 FR 29480, May 21, 1979.	NA.
Gulf of Maine Atlantic salmon.	<i>Salmo salar</i>	U.S.A., ME, Gulf of Maine Distinct Population Segment. The GOM DPS includes all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, and wherever these fish occur in the estuarine and marine environment. The following impassable falls delimit the upstream extent of the freshwater range: Rumford Falls in the town of Rumford on the Androscoggin River; Snow Falls in the town of West Paris on the Little Androscoggin River; Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin. The marine range of the GOM DPS extends from the Gulf of Maine, throughout the Northwest Atlantic Ocean, to the coast of Greenland. Included are all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). Excluded are landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	65 FR 69469; November 17, 2000; 74 FR 29344, June 19, 2009.	NA

§ 224.101

50 CFR Ch. II (10–1–13 Edition)

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Snake River sockeye.	<i>Oncorhynchus nerka</i> .	U.S.A., ID, including all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, as well as artificially propagated sockeye salmon from the Redfish Lake captive propagation program.	56 FR 58619, Nov. 20, 1991. June 28, 2005.	58 FR 68543, Dec. 28, 1993.
Sacramento River winter-run Chinook.	<i>Oncorhynchus tshawytscha</i> .	U.S.A., CA, including all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: winter-run Chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run Chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory.	52 FR 6041; Feb. 27, 1987, 55 FR 49623; Nov. 30, 1990. 59 FR 440; Jan. 1, 1994. June 28, 2005.	58 FR 33212, June 16, 1993.
Upper Columbia spring-run Chinook.	<i>Oncorhynchus tshawytscha</i> .	U.S.A., WA, including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs.	64 FR 14308, Mar. 24, 1999. June 28, 2005.	NA. [vacated 9/29/03; 68 FR 55900].
Central California Coast coho.	<i>Oncorhynchus kitsutch</i> .	U.S.A., CA, including all naturally spawning populations of coho salmon from Punta Gorda in northern California south to and including Aptos Creek in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well as three artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, and the Scott Creek Captive Broodstock Program.	77 FR 19562, April 2, 2012.	64 FR 24049; May 5, 1999.
Southern California Steelhead.	<i>Oncorhynchus mykiss</i> .	U.S.A., CA, Distinct Population Segment including all naturally spawned anadromous <i>O. mykiss</i> (steelhead) populations below natural and manmade impassable barriers in streams from the Santa Maria River, San Luis Obispo County, California, (inclusive) to the U.S.-Mexico Border.	62 FR 43937, Aug. 18, 1997. Jan. 5, 2006	70 FR 52488, Sept. 2, 2005.
Puget Sound/ Georgia Basin DPS—Bocaccio.	<i>Sebastes paucispinis</i> .	U.S.A., Washington, and British Columbia, including Puget Sound and Georgia Basin.	75 FR 22290, Apr. 28, 2010.	75 FR 22290, Apr. 28, 2010.
Large-tooth Sawfish.	<i>Pristis perotteti</i>	Everywhere	76 FR 40835, July 12, 2011.	NA

National Marine Fisheries Service/NOAA, Commerce

§ 224.101

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Atlantic Sturgeon—New York Bight DPS.	<i>Acipenser oxyrinchus oxyrinchus</i> .	New York Bight Distinct Population Segment. The NYB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island. Within this range, Atlantic sturgeon have been documented from the Hudson and Delaware rivers as well as at the mouth of the Connecticut and Taunton rivers, and throughout Long Island Sound. The marine range of Atlantic sturgeon from the NYB DPS extends from Hamilton Inlet, Labrador, Canada to Cape Canaveral, FL. The NYB DPS also includes Atlantic sturgeon held in captivity (<i>e.g.</i> , hatcheries, scientific institutions) and which are identified as fish belonging to the NYB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the NYB DPS, or is the progeny of any fish that originated from a river within the range of the NYB DPS.	77 FR 5880; 2/6/12.	NA.
Atlantic Sturgeon—Chesapeake Bay DPS.	<i>Acipenser oxyrinchus oxyrinchus</i> .	Chesapeake Bay Distinct Population Segment. The CB DPS includes the following: all anadromous Atlantic sturgeon that are spawned in the watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, VA, as well as wherever these fish occur in coastal bays and estuaries and the marine environment. Within this range, Atlantic sturgeon have been documented from the James, York, Potomac, Rappahannock, Pocomoke, Choptank, Little Choptank, Patapsco, Nanticoke, Honga, and South rivers as well as the Susquehanna Flats. The marine range of Atlantic sturgeon from the CB DPS extends from Labrador Inlet, Labrador, Canada to Cape Canaveral, FL. The CB DPS also includes Atlantic sturgeon held in captivity (<i>e.g.</i> , hatcheries, scientific institutions) and which are identified as fish belonging to the CB DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the CB DPS, or is the progeny of any fish that originated from a river within the range of the CB DPS.	77 FR 5880; 2/6/12.	NA.

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation for critical habitat designation
Common name	Scientific name			
Atlantic Sturgeon—Carolina DPS.	<i>Acipenser oxyrinchus oxyrinchus</i> .	The Carolina DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor. The marine range of Atlantic sturgeon from the Carolina DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The Carolina DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the Carolina DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the Carolina DPS, or is the progeny of any fish that originated from a river within the range of the Carolina DPS.	77 FR 5914; 2/6/12.	NA.
Atlantic Sturgeon—South Atlantic DPS.	<i>Acipenser oxyrinchus oxyrinchus</i> .	The South Atlantic DPS includes all Atlantic sturgeon that spawn or are spawned in the watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida. The marine range of Atlantic sturgeon from the South Atlantic DPS extends from the Hamilton Inlet, Labrador, Canada, to Cape Canaveral, Florida. The South Atlantic DPS also includes Atlantic sturgeon held in captivity (e.g., aquaria, hatcheries, and scientific institutions) and which are identified as fish belonging to the South Atlantic DPS based on genetics analyses, previously applied tags, previously applied marks, or documentation to verify that the fish originated from (hatched in) a river within the range of the South Atlantic DPS, or is the progeny of any fish that originated from a river within the range of the South Atlantic DPS.	77 FR 5914; 2/6/12.	NA.

¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

(b) *Marine mammals*. Beluga whale (*Delphinapterus leucas*), Cook Inlet distinct population segment; Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); False killer whale (*Pseudorca crassidens*), Main Hawaiian Islands Insular distinct population segment; Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not in-

cluding Southern Resident killer whales placed in captivity prior to listing or their captive born progeny; Ladoga ringed seal (*Phoca (=Pusa) hispida ladogensis*); Mediterranean monk seal (*Monachus monachus*); North Atlantic right whale (*Eubalaena glacialis*); North Pacific right whale (*Eubalaena japonica*); Southern right whale (*Eubalaena australis*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (*Eumetopias jubatus*), which consists of Steller sea lions from breeding colonies located west of 144° W. longitude.

National Marine Fisheries Service/NOAA, Commerce

§ 224.101

(c) *Sea turtles*. The following table lists the common and scientific names of endangered sea turtles, the locations where they are listed, and the citations for the listings and critical habitat designations. Jurisdiction for sea turtles

by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

Species ¹		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
(1) Green sea turtle ..	<i>Chelonia mydas</i>	Breeding colony populations in Florida and on the Pacific coast of Mexico	43 FR 32800; Jul 28, 1978	NA.
(2) Hawksbill sea turtle.	<i>Eretmochelys imbricata</i>	Wherever found; tropical seas	35 FR 8491; Jun 2, 1970	47 FR 27295; Jun 24, 1982, 63 FR 46693; Sep 2, 1998, 64 FR 14052; Mar 23, 1999.
(3) Kemp's ridley sea turtle.	<i>Lepidochelys kempii</i>	Wherever found; tropical and temperate seas in Atlantic Basin, incl. Gulf of Mexico	35 FR 18319; Dec 2, 1970	NA.
(4) Leatherback sea turtle.	<i>Dermochelys coriacea</i>	Wherever found; tropical, temperate, and subpolar seas	35 FR 8491; Jun 2, 1970	43 FR 43688; Sep 26, 1978, 44 FR 17710; Mar 23, 1979, 64 FR 14052; Mar 23, 1999.
(5) Loggerhead sea turtle—Mediterranean Sea DPS.	<i>Caretta caretta</i>	Mediterranean Sea east of 5°36' W Long	76 FR 58951, Sept. 22, 2011	NA.
(6) Loggerhead sea turtle—North Indian Ocean DPS.	<i>Caretta caretta</i>	North Indian Ocean north of the equator and south of 30° N. Lat	76 FR 58951, Sept. 22, 2011	NA.
(7) Loggerhead sea turtle—North Pacific Ocean DPS.	<i>Caretta caretta</i>	North Pacific north of the equator and south of 60° N. Lat	76 FR 58951, Sept. 22, 2011	NA.
(8) Loggerhead sea turtle—Northeast Atlantic Ocean DPS.	<i>Caretta caretta</i>	Northeast Atlantic Ocean north of the equator, south of 60° N. Lat., and east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36' W. Long	76 FR 58951, Sept. 22, 2011	NA.
(9) Loggerhead sea turtle—South Pacific Ocean DPS.	<i>Caretta caretta</i>	South Pacific south of the equator, north of 60° S. Lat., west of 67° W. Long., and east of 141° E. Long	76 FR 58951, Sept. 22, 2011	NA.
(10) Sea turtle, olive ridley.	<i>Lepidochelys olivacea</i>	Breeding colony populations on the Pacific coast of Mexico	43 FR 32800; Jul 28, 1978	NA.

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

(d) *Marine invertebrates*. The following table lists the common and scientific names of endangered species, the loca-

tions where they are listed, and the citations for the listings and critical habitat designations.

Species		Where Listed	Citation (s) for Listing Determinations	Citations (s) for Critical Habitat Designations
Common name	Scientific name			
Black abalone	<i>Haliotis cracherodii</i>	USA, CA. From Crescent City, California, USA to Cape San Lucas, Baja California, Mexico, including all offshore islands.	74 FR 1937; January 14, 2009	N/A
White abalone	<i>Haliotis sorenseni</i>	USA, CA. From Point Conception, California to Punta Abreojos, Baja California, Mexico including all offshore islands and banks.	NOAA 2001; 66 FR 29054, May, 29, 2001.	Deemed not prudent NOAA 2001; 66 FR 29054, May, 29, 2001.

[64 FR 14066, Mar. 23, 1999, as amended 64 FR 14328, Mar. 24, 1999; 65 FR 20918, Apr. 19, 2000; 65 FR 69481, Nov. 17, 2000; 66 FR 29055, May 29, 2001; 67 FR 21598, May 1, 2002; 68 FR 15680, Apr. 1, 2003; 70 FR 37203, June 28, 2005; 70 FR 69912, Nov. 18, 2005; 71 FR 861, Jan. 5, 2006; 73 FR 12030, Mar. 6, 2008; 73 FR 63907, Oct. 28, 2008; 73 FR 62930, Oct. 22, 2008; 74 FR 1946, Jan. 14, 2009; 74 FR 29386, June 19, 2009; 75 FR 22290, Apr. 28, 2010; 76 FR 14300, Mar. 16, 2011; 76 FR 40835, July 12, 2011; 77 FR 70939, Nov. 28, 2012; 77 FR 76737, Dec. 28, 2012]

§ 224.102 Permits for endangered marine and anadromous species.

No person shall take, import, export, or engage in any activity prohibited by section 9 of the Act involving any marine species that has been determined to be endangered under the Endangered Species Conservation Act of 1969 or the Act, and that is under the jurisdiction of the Secretary, without a valid permit issued pursuant to part 222, subpart C of this chapter.

§ 224.103 Special prohibitions for endangered marine mammals.

(a) *Approaching humpback whales in Hawaii.* Except as provided in part 222, subpart C, of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(1) Operate any aircraft within 1,000 feet (300 m) of any humpback whale;

(2) Approach, by any means, within 100 yard (90 m) of any humpback whale;

(3) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(4) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(b) *Approaching humpback whales in Alaska—(1) Prohibitions.* Except as pro-

vided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed, within 200 nautical miles (370.4 km) of Alaska, or within inland waters of the state, any of the acts in paragraphs (b)(1)(i) through (b)(1)(iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel), within 100 yards (91.4 m) of any humpback whale; or

(ii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(4) of this section.

(2) *Exceptions.* The following exceptions apply to this paragraph (b), but any person who claims the applicability of an exception has the burden of proving that the exception applies:

(i) Paragraph (b)(1) of this section does not apply if an approach is authorized by the National Marine Fisheries Service through a permit issued under part 222, subpart C, of this chapter (General Permit Procedures) or through a similar authorization.

(ii) Paragraph (b)(1) of this section does not apply to the extent that a vessel is restricted in her ability to maneuver and, because of the restriction, cannot comply with paragraph (b)(1) of this section.

(iii) Paragraph (b)(1) of this section does not apply to commercial fishing vessels lawfully engaged in actively setting, retrieving or closely tending commercial fishing gear. For purposes of this paragraph (b), commercial fishing means taking or harvesting fish or fishery resources to sell, barter, or